

Application No. 10/762,616
Amdt. dated 4 May 2009
Reply to Office Action of 4 February 2009

REMARKS / ARGUMENTS

In the above-identified Office Action the Examiner has rejected claims 2,3,5,6, 18, 20 and 22 based on the new limitation "consisting essentially of." Applicant has amended the claim to go back to the original language of "comprising" and, as such, this rejection is considered obviated.

In addition, claims 1, 13, 15, 17, 19 and 21 have been rejected as unpatentable over Cipla while claims 2, 3, 5, 18, 20 and 22 have been rejected as unpatentable over Cipla in view of Gillis et al. In addition, Claim 6 has been rejected as unpatentable over Cipla and Gillis et al. in view of U.S. Patent 5,660,860 while Claim 16 was rejected as unpatentable over Cipla in view of U.S. Patent 5,660,860.

Applicant believes that the claims are now patentable based on two rationales. First, that Cipla is not prior art to the subject invention and thus, without Cipla, the claims cannot be found obvious. Second, Applicant has amended the claims so that they now recite that the composition comprises a single tablet of a uniform mixture.

Taking the second rationale first, as noted above, claims 1 and 2 have been amended so that they now recite a single dosage unit having a uniform mixture. Applicant notes that the reference of Cipla concerns a kit having one tablet of fluconazole and 2 tablets of tinidazole to be take as a single oral dose. Applicant has combined these three tablets into a single tablet in a uniformed mixture. There is no teaching or suggestion in the art that such individual composition of fluconazole and tinidazole would be compatible and would not react in situ when combined. Accordingly, it is not obvious to combine these two ingredients into a single tablet in a uniform mixture as now recited int the claims.

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In addition, Applicant maintains that the Cipla reference is not prior art to the subject invention. Applicant encloses a copy of the Cipla reference obtained through the Wayback Machine™, (i.e., Internet Archive) showing the 2000 copyright date and otherwise conforming to the copy cited by the Examiner. Applicant also encloses a copy of a page from the Wayback Machine™ showing that this page first appeared in the year 2004, significantly after the priority date of the subject application. As a result, this would seem to contravene the date given by the Examiner in conjunction with the copyright notice date of the Cipla reference and establishes the fact that Cipla cannot be prior art to the subject application. Cipla being removed as a reference, all rejections must fail and thus Applicant believes that the subject invention as now claimed to be patentable.

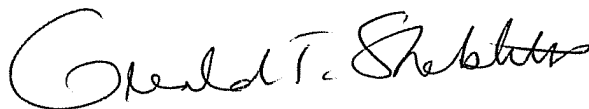
Applicant hereby requests reconsideration and reexamination thereof.

No further fee or petition is believed to be necessary. However, should any further fee be needed, please charge our Deposit Account No. 23-0920, and deem this paper to be the required petition.

With the above amendments and remarks, this application is considered ready for allowance and applicant earnestly solicits an early notice of same. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, he/she is respectfully requested to call the undersigned at the below listed number.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald T. Shekleton". The signature is fluid and cursive, with the first name "Gerald" being more prominent than the last name "Shekleton".

Dated: 4 May 2009

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